IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.6035 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
2	To be referred to the Reporter or not ?	**NO**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5	Whether it is to be circulated to the civil judge ?	**NO**

==========

SARVAJANIK KELAVANI MANDAL - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR AJ SHASTRI for Petitioner(s) : 1,
MR APURVA A. DAVE, AGP for Respondent(s) : 1 - 2

==========

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 23/10/2007
ORAL JUDGMENT

(1) RULE. Learned Assistant Government Pleader appearing for the respondents is directed to waive service. The petition is taken up for final hearing and disposal today.

(2) The petitioner-Trust is running a school in the name of Shree Unnati Vidhyalaya, Vadodara. On 17.09.2006 the petitioner-Trust passed a resolution that five classes, one each of standards 8 to 12, be reduced considering the reduced strength of the students. On the basis of the said resolution on 22.09.2006 a request was made to the respondent authority to permit reduction and closure of such classes. Thereafter various hearings took place before the respondent authority. Vide impugned order dated 30.10.2006 made by respondent No.2-District Education Officer, the said authority has declared closure of the school w.e.f. October 2006. Consequential order of declaring 16 teachers as well as non-teaching staff being surplus has also been made. It is this decision which is under challenge.

(3) The grievance made by the petitioner is that the impugned order dated 30.10.2006 could not have been made by respondent No.2 as the

powers to withdraw the registration of a secondary school vests in the Secondary Education Board as provided by Section 17(18) of the Gujarat Secondary Education Act, 1972 (the Act), after following the prescribed procedure.

(4) The learned Assistant Government Pleader, appearing on behalf of the respondent authorities, has tried to support the impugned order on the ground that once all the classes are closed and in absence of any students whether the order for closure of classes is made or closure of school is made it would make no difference and hence, no interference is warranted.

(5) Having heard the learned advocates appearing for the respective parties it is apparent that the impugned order cannot be permitted to operate. Section 17 of the Act deals with *Powers and duties of the Board*. The opening portion states, subject to the provisions of

the Act, the powers and duties of the Board shall be as follows. Sub-section (18) of Section 17 of the Act stipulates "*to withdraw registration of secondary schools either in whole or in part after following the prescribed procedure*". Therefore, it is apparent that the powers to withdraw registration of secondary school vests only in the Board. On behalf of the respondent authority no contrary provision, permitting exercise of such powers by respondent No.2, has been pointed out.

(6) The law is well settled. Once a specified authority is vested with certain powers by a statutory provision no other authority can exercise such powers unless and until such powers are vested in the other authority. This applies with greater rigour in case of a subordinate authority. The subordinate authority cannot usurp the powers vested in the superior authority. Admittedly, respondent

No.2 cannot take on the role of the Board considering the scheme of the Act.

(7) In the aforesaid fact situation the impugned order dated 30.10.2006 is quashed and set aside to the extent it directs closure of school. However, the order shall operate to the limited extent of closure of classes as requested for by the petitioner.

(8) The petition is accordingly allowed in aforesaid terms. Rule made absolute. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

***

Bhavesh*